

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLATHINA McMILLAN-HOYTE, As Administrator
of the Estate of Henderson Hoyte, Deceased and
Clathina McMillan-Hoye, Individually,
Plaintiff,

Case No. 1:15-CV-934
(GTS/CFH)

v.

TREVOR BLACK; BASIL SAOUR; ALEXANDRA
PAUL; LORRAINE THIBODEAU; MICHAEL
DAILEY; SAMIRA KHAN MANJI; JOHN GERMAN;
ALBANY MED. CTR. HOSP.; PADMAJA MANDALA;
WHITNEY M. YOUNG JR. HEALTH CTR., INC.;
ADAM SUSLAK; NORTHEAST ORTHOPAEDICS LLP;
PAUL DANKER; and ALBANY MEM'L HOSP.,
Defendants.

APPEARANCES:

OF COUNSEL:

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GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in the above-captioned personal injury action, are the following two motions: (1) a motion by Defendants Padmaja Mandala and Whitney M. Young Jr. Health Center, Inc., pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, to substitute the United States for the two moving Defendants, and to dismiss Plaintiff's claims against the United States for lack of subject-matter jurisdiction; and (2) a cross-motion by Plaintiff to dismiss Plaintiff's claims against the United States only without prejudice (to permit Plaintiff to exhaust her administrative remedies regarding that claim) and to remand the remainder of this action to New York State Supreme Court, Albany County, pursuant to 28 U.S.C. § 1447(c). (Dkt. Nos. 6, 28.)

Both motions are unopposed. (Dkt. Nos. 26 [Response of Plaintiff], 27 [Response of Danker], 29 [Response of Albany Mem'l Hosp.], 30 [Response of Suslak and Northeast

Orthopaedics, LLP], 31 [Response of Black, Saour, Paul, Thibodeau, Dailey, Manji, German, and Albany Med. Ctr. Hosp.]; *see also* Text Notice of 08/31/2015 [setting deadline for Mandala and Whitney M. Young Jr. Health Center, Inc.’s reply to Plaintiff’s cross-motion as 09/08/2015].)

In this District, when a non-movant fails to oppose a legal argument asserted by a movant, the movant’s burden with regard to that argument is lightened, such that, in order to succeed on that argument, the movant need only show that the argument possess facial merit, which has appropriately been characterized as a “modest” burden. *See* N.D.N.Y. L.R. 7.1(b)(3) (“Where a properly filed motion is unopposed and the Court determined that the moving party has met to demonstrate entitlement to the relief requested therein”); *Rusyniak v. Gensini*, 07-CV-0279, 2009 WL 3672105, at *1, n.1 (N.D.N.Y. Oct. 30, 2009) (Suddaby, J.) (collecting cases); *Este-Green v. Astrue*, 09-CV-0722, 2009 WL2473509, at *2 & nn.2, 3 (N.D.N.Y. Aug. 7, 2009) (Suddaby, J.) (collecting cases).

Here, after carefully considering the matter, the Court finds that both motions possess facial merit for the reasons stated therein. (Dkt. Nos. 6, 28.) As a result, the Court grants those motions.

ACCORDINGLY, it is

ORDERED that the motion of Defendants Padmaja Mandala and Whitney M. Young Jr. Health Center, Inc., pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, to substitute the United States for the two moving Defendants, and to dismiss Plaintiff’s claims against the United States for lack of subject-matter jurisdiction (Dkt. No. 6) is **GRANTED**; and it is further

ORDERED that the cross-motion of Plaintiff to dismiss her claims against the United States only without prejudice (to permit Plaintiff to exhaust her administrative remedies regarding that claim) and to remand the remainder of this action to New York State Supreme Court, Albany County, pursuant to 28 U.S.C. § 1447(c) (Dkt. No. 28) is **GRANTED**; and it is further

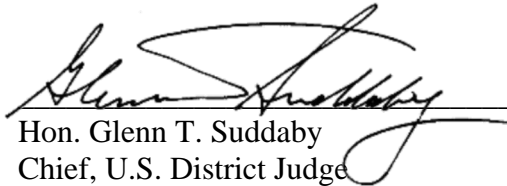
ORDERED that the Clerk of this Court shall **SUBSTITUTE** the United States for Defendants Padmaja Mandala and Whitney M. Young Jr. Health Center, Inc.; and it is further

ORDERED that Plaintiff's claims against the United States are **DISMISSED** without prejudice to refiling upon exhaustion of her administrative remedies; and it is further

ORDERED that, pursuant to 28 U.S.C. §1447(c), this action is **REMANDED** to New York State Supreme Court, Albany County, in its entirety without costs and expenses to either party; and it is further

ORDERED that the Clerk of this Court shall forward a certified copy of this Decision and Order to the Clerk of New York State Supreme Court, Albany County, and **CLOSE** this action.

Dated: September 15, 2015
Syracuse, New York


Hon. Glenn T. Suddaby
Chief, U.S. District Judge